interexchange services by competitors[74] and it would constitute irrational decisionmaking to mandate the same sort of anticompetitive behavior that it recently sought to discourage.

In any event, it is questionable whether the Commission can command its regulatees to violate the antitrust laws. The courts have often held that neither the Act nor rules promulgated under it confer an implied immunity to the antitrust laws.[75] Moreover, since enactment of the 1996 Act, the Commission no longer has any authority to grant express immunity from antitrust scrutiny. The legislative history of the 1996 Act reveals that Congress intended, by repealing the last remaining express immunity provision in the Act, "to end the Commission's ability to confer antitrust immunity" and get both the Department of Justice and the FCC "back to their proper roles."[76]

Not only is cross-affiliate rate integration anticompetitive, it is also unlikely to be easily achievable. Affiliated companies, both within a given corporate families and down the daisy chain, are likely to utilize a wide variety of pricing plans, beyond the toll-free wide-area plans discussed above. For example, some BellSouth CMRS affiliates use flat, postalized rates, while others use rates based on mileage. Identifying and compiling all of these various rate plans, and then determining which ones must be changed or eliminated to comply with rate integration is a highly complex process. Under these circumstances, the absence of a clear and substantial public benefit from rate integration across CMRS affiliates warrants elimination of the requirement.

---

[74] *See Interstate, Interexchange Marketplace,* CC Docket 96-61, *Second Report and Order,* 11 F.C.C.R. 20,730, 20,793-96 (1996).

[75] *See, e.g., Southern Pac. Communications Co. v. AT&T,* 740 F.2d 980 (D.C. Cir. 1984), *cert. denied* 470 U.S. 1005 (1985); *Phonetele Inc. v. AT&T,* 664 F.2d 716, 727-38 (9th Cir. 1981), *cert. denied,* 459 U.S. 1145 (1983); *Northeastern Tel. Co. v. AT&T,* 651 F.2d 76, 82-84 (2d Cir. 1981); *Sound, Inc. v. AT&T,* 631 F.2d 1324, 1327-35 (8th Cir. 1980); *Mid-Texas Communications Sys., Inc. v. AT&T,* 615 F.2d 1372, 1377-82 (5th Cir. 1980).

[76] Joint Explanatory Statement at 201.

III. RATE INTEGRATION SHOULD NOT APPLY IN A UNITARY WAY ACROSS A COMPANY'S CMRS SERVICES, BUT SHOULD BE APPLIED, IF AT ALL, SEPARATELY FOR CELLULAR AND BROADBAND PCS

BellSouth submits that the Commission should not continue to require rate integration to apply across cellular-PCS lines within a company or group of affiliates, in the event CMRS remains subject to rate integration at all. Requiring cross-service rate integration will disadvantage consumers where such PCS and cellular systems are commonly owned even though in different markets. This is because PCS systems need to adopt new pricing approaches to develop a customer base, given the existence of two incumbent cellular systems. If the Commission requires the PCS carrier to be rate-integrated with its sister cellular carriers in other markets, it will significantly retard the ability of a PCS carrier to enter into competition with incumbent cellular carriers. Under rate integration, a PCS licensee's entry-related pricing strategies would be dependent in large part upon the pricing strategies of its sister cellular carriers in unrelated markets. This would have the effect of establishing a single price schedule for both new entrants and incumbents nationwide. Any regulation of the prices charged by new entrants — and particularly tying new entrants to incumbents' prices elsewhere — will dampen the prospects for competitive entry into PCS by cellular-affiliated companies.

The Commission recognized that there are circumstances warranting separate rate integration pools within a corporate family: In the *Reconsideration Order* it held that a company's landline and CMRS affiliates should not be required to integrate their interexchange rates uniformly, but may maintain separate rate integration schedules.[77] To the extent rate integration continues to apply to CMRS, it should apply separately to cellular and broadband PCS as a matter of sound public policy.

---

[77] *Reconsideration Order* at ¶ 18.

CONCLUSION

For the foregoing reasons and for the reasons set forth in BellSouth's comments supporting PrimeCo's stay request, the Commission should exempt CMRS providers from rate integration. At a minimum, if CMRS is subject to rate integration requirements, the Commission should (1) clarify that CMRS carriers are not required to integrate optional toll-free calling plans; (2) eliminate the current requirement of rate integration across CMRS affiliates; (3) allow CMRS providers to integrate their interstate interexchange rates for cellular and broadband PCS operations separately; (4) clearly define what constitutes an "interstate, interexchange" CMRS rate subject to integration; and (5) specify that CMRS providers have a transition period of at least one year to achieve rate integration.

Respectfully submitted,

BELLSOUTH CORPORATION

By: _____

C. Claiborne Barksdale
1100 Peachtree Street, NE, Suite 910
Atlanta, GA 30309-4599
(404) 249-0917

By: _____

William B. Barfield
Jim O. Llewellyn
1155 Peachtree Street, NE, Suite 1800
Atlanta, GA 30309-2641
(404) 249-4445

By: _____

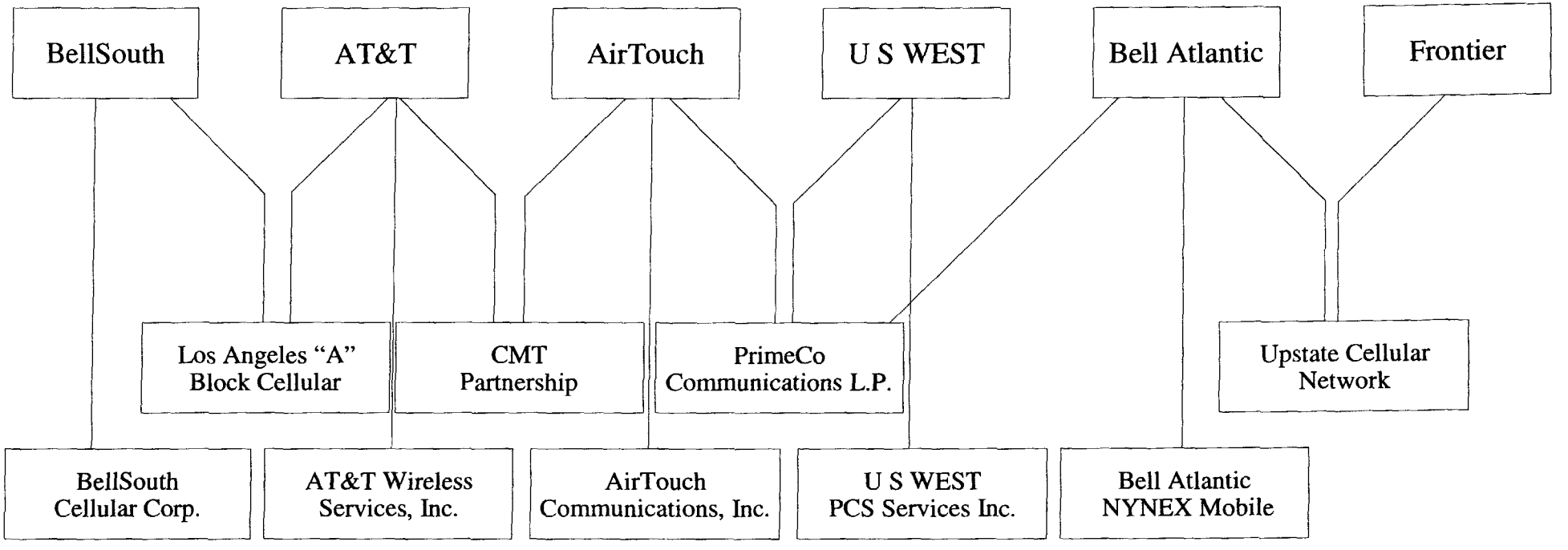
David G. Frolio
1133 21st Street, N.W.
Washington, DC 20036
(202) 463-4182

Its Attorneys

October 3, 1997

ATTACHMENT A

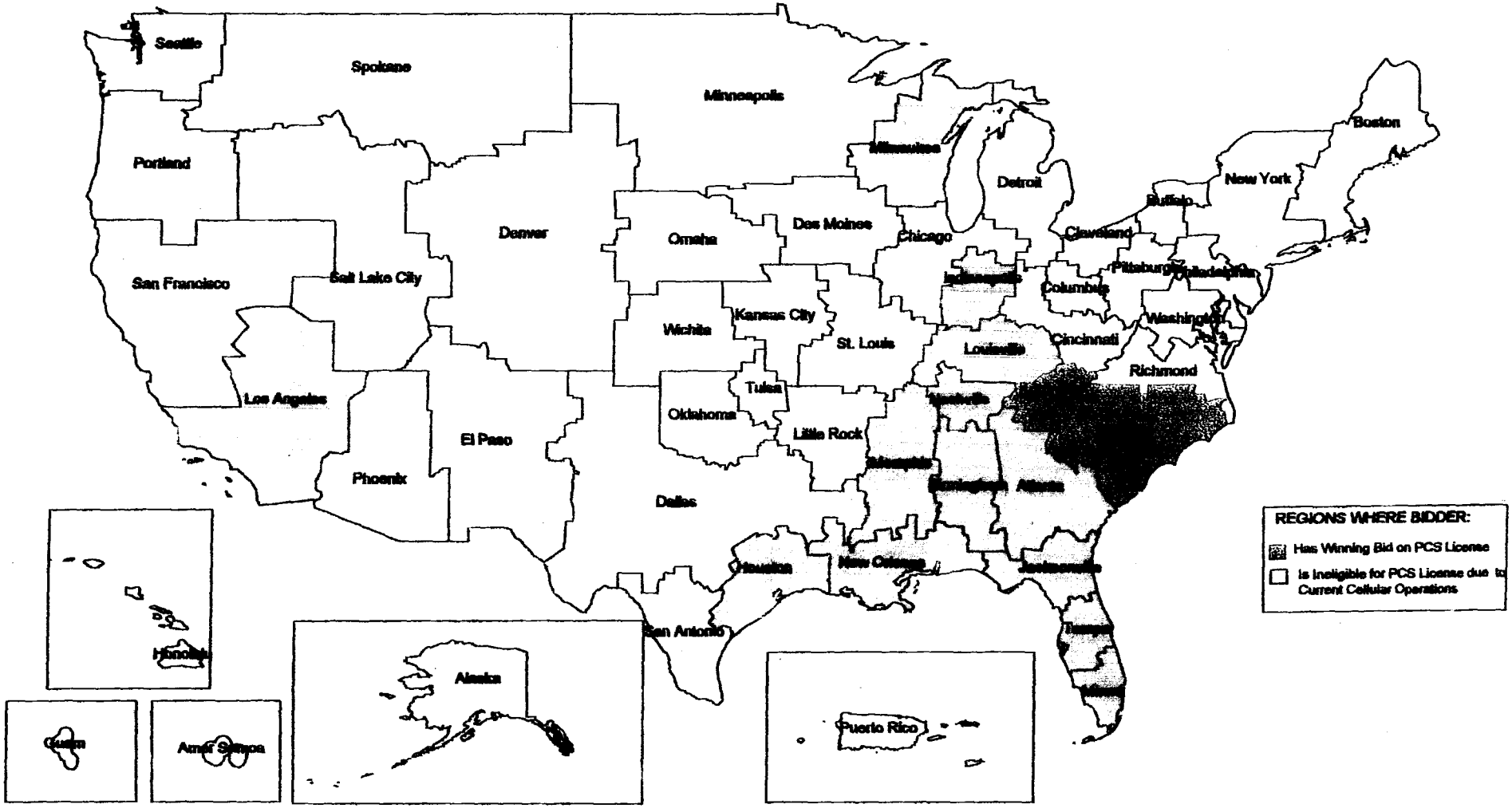
"Daisy Chain" of CMRS Ownership Due to Affiliation Rule



ATTACHMENT B

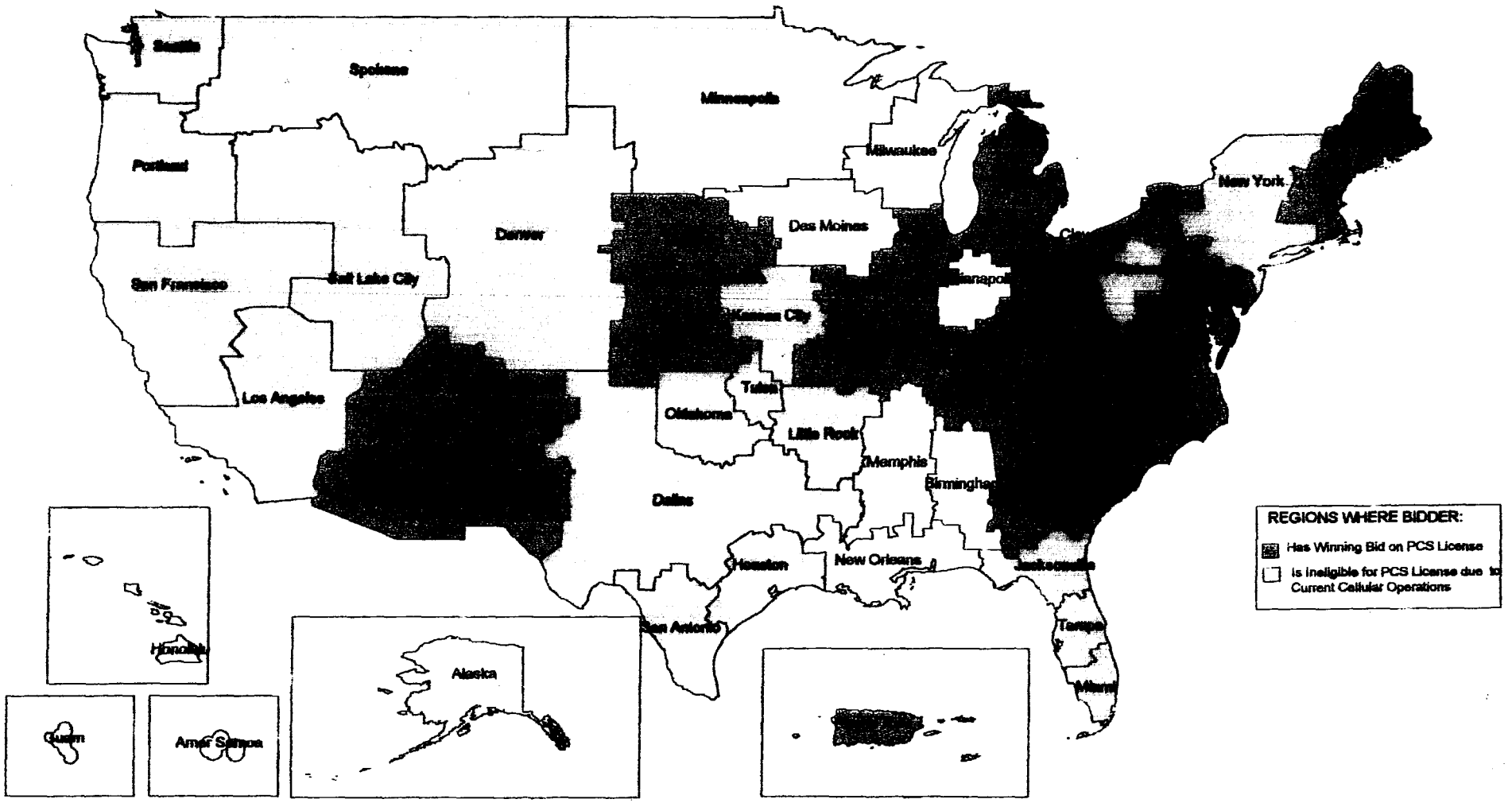
FCC MTA BROADBAND PCS AUCTION

BellSouth Personal Communications, Inc



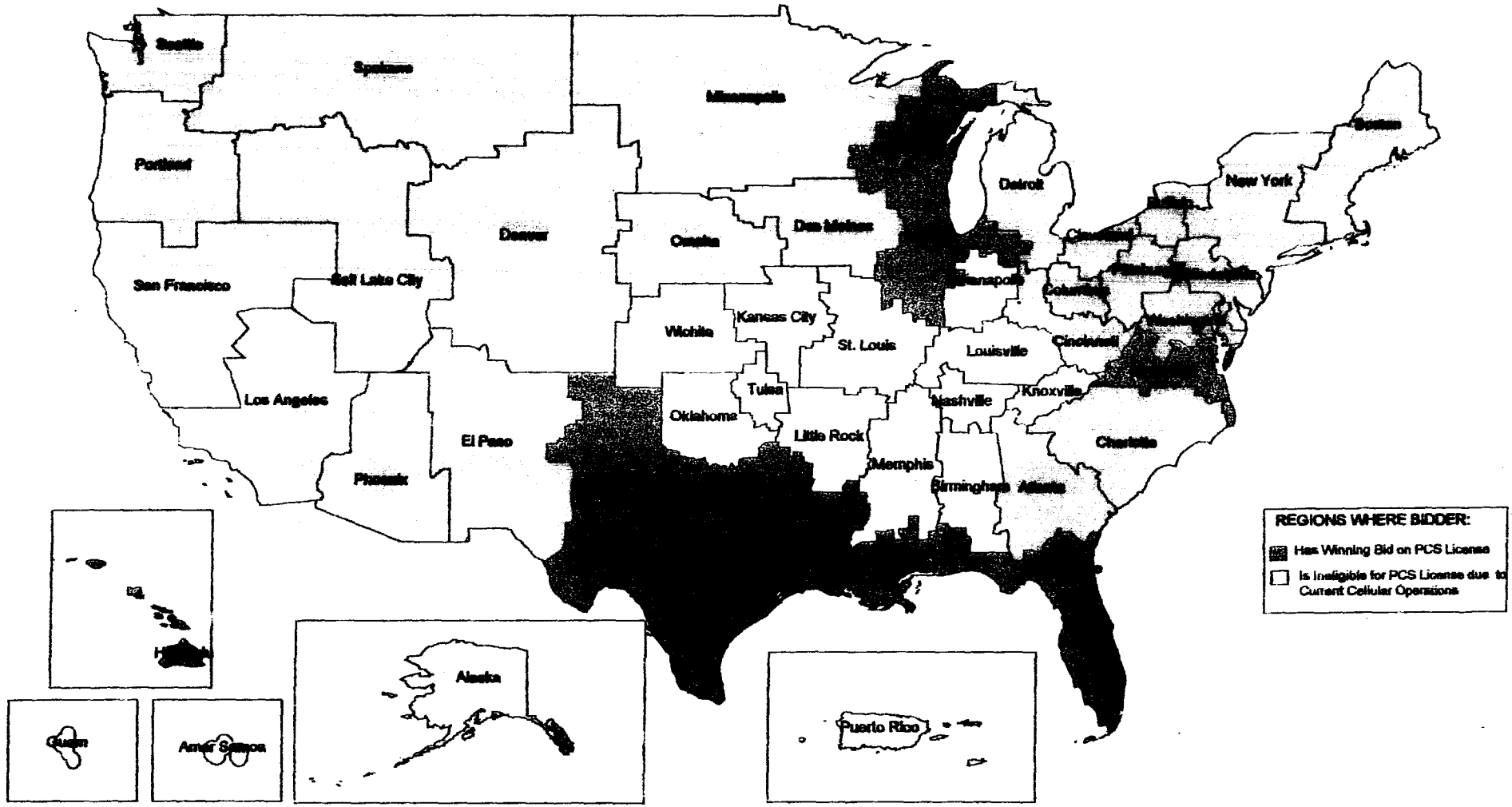
FCC MTA BROADBAND PCS AUCTION

AT&T WIRELESS PCS INC.



FCC MTA BROADBAND PCS AUCTION

PCS PRIMECO, L.P.



ATTACHMENT C

Broadband PCS A/B Block and Cellular Coverage (Combined)